

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

O.P.No.12622 of 1998(C)

PETITIONERS:-

1. Dr.K.M.MEHABOOB,
'SHADE', CHRISTIAN COLLEGE CROSS ROAD,
CALICUT - 673 011.
2. Mrs.HAZEENA MEHABOOB, W/O.Dr.K.M.MEHABOOB,
'SHADE', CHRISTIAN COLLEGE CROSS ROAD,
CALICUT - 673 011.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SECRETARY,
ELATHUR GRAMA PANCHAYAT,
PUTHIYANGADI, KOZHIKODE.
3. THE SECRETARY,
CALICUT DEVELOPMENT AUTHORITY,
KOZHIKODE.

R1 BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU.

R2 BY ADVOCATE SRI.P.V.KUNHIKRISHNAN.

R3 BY STANDING COUNSEL SRI.M.K.ABOOBACKER.

SRI.K.P.G.MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING-

APPENDIX

PETITIONERS' EXHIBITS:-

- EXT.P1 - PHOTO COPY OF DEVELOPMENT PERMIT VIDE NO.4870/P.2/94 CDA DATED 25.5.94 ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER.
- EXT.P2 - PHOTO COPY OF GBUILDING PERMIT NO.A4-84/94-95 DATED 20.6.94 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- EXT.P3 - PHOTO COPY OF DEVELOPMENT PERMIT NO.3068/P.2/95 CDA DATED 30.3.95 ISSUED BY THE 3RD RESPONDENT ISSUED TO THE 1ST PETITIONER.
- EXT.P4 - PHOTOCOPY OF BUILDING PERMIT NO.A4/15/95/96 DATED 3.5.95 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- EXT.P5 - PHOTOGRAPH SHOWING THE RESIDENTIAL BUILDING IN QUESTION REFERRED TO IN THE ORIGINAL PETITION.
- EXT.P6 - TRUE COPY OF NOTICE NO.A4.711/96 DATED 30.9.96 OF THE 2ND RESPONDENT ISSUED TO THE 1ST PETITIONER.
- EXT.P7 - TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT DATED 1.10.96.
- EXT.P8 - TRUE COPY OF NOTICE NO.A4.1673/98(4) DATED 27.6.98 OF THE 2ND RESPONDENT ISSUED TO THE 1ST PETITIONER.
- EXT.P9 - TRUE COPY OF ORDER NO.J-17011/23/92-IA.101 DATED 27.9.96 OF THE GOVERNMENT OF INDIA, MINISTRY OF ENVIRONMENT & FORESTS I.A. DIVISION, NEW DELHI, ISSUED TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R2(a) - COPY OF THE LETTER RECEIVED FROM THE ASST.EXECUTIVE ENGINEER, IRRIGATION SOUTH SUB DIVISION, CALICUT TO THE PANCHAYATH, DATED 19.6.96.
- EXT.R2(b) - COPY OF THE PUBLIC NOTICE ISSUED BY THE PANCHAYAT ON 10.7.96.
- EXT.R2(c) - COPY OF THE CIRCULAR ISSUED BY THE GOVERNMENT OF KERALA ON 11.7.96.
- EXT.R2(d) - COPY OF THE CIRCULAR ISSUED BY THE PANCHAYAT DIRECTOR, DATED 17.7.96.
- EXT.R2(e) - COPY OF THE COMPLETION REPORT RECEIVED BY THE PANCHAYATH FROM THE PETITIONERS.

- TRUE COPY-

V.K.Bali,C.J. & M.Ramachandran,J.

O.P.No.12622 of 1998-C

Dated, this the 5th day of January, 2007

JUDGMENT

V.K.Bali,C.J. (Oral)

Dr.K.M.Mehaboob and his wife Hazeena Mehaboob have filed this writ petition under Article 226 of the Constitution of India seeking to quash Exhibit P8 notice dated 27th June, 1998 issued by the 2nd respondent for demolishing the house constructed by them. Primarily, the case of the petitioners is that before the notice was issued, permission was granted by the Grama Panchayat.

2. The matter has been pending in this Court for almost eight years. During this period, the Coastal Zone Management Authority has been constituted in the State. We may mention here that the notice for demolition is based on violation of coastal zone area. Learned counsel representing the petitioners, in the circumstances as mentioned above, states that the matter now should be examined by the Coastal Zone Management Authority of the State of Kerala particularly when the house was constructed under a permission and was completed before notice was issued.

3. The suggestion given by the petitioner is not opposed by the counsel for the respondents. We may also mention here that in similar circumstances Supreme Court passed such an order in Special

Leave to Appeal (Civil) No.5038 of 2002 in the matter of **P.A.Fazal Gafoor v. State of Kerala & Others** on 25.4.2003. In the circumstances as mentioned above, we direct that the Coastal Zone Management Authority of Kerala would examine the issue and decide the dispute as to whether construction made by the petitioners is in contravention of the Regulation or not. The Coastal Zone Management Authority itself shall consider as to whether the Regulation would apply to the petitioners or not. Naturally, the Authority should decide the matter after issuing notice to all parties concerned. Meanwhile the status-quo shall be maintained.

The Original Petition is disposed of as indicated above.
C.M.P.No.22073 of 1998 does not survive.

Let a copy of this judgment be sent to the Coastal Zone Management Authority of Kerala.

V.K.Bali
Chief Justice

M.Ramachandran
Judge

vku/-